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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

APR 30 2004

JAMES R. LARSEN, CLERK
DEPUTY
SPOKANE, WASHINGTON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

ALBERT M. ZLOTNICK,

Plaintiff,

v.

WORKLAND & WITHERSPOON,
PLLC, GREGORY LIPSKER and JANE
DOE LIPSKER, and the marital
community comprised thereof,

Defendants.

CV-04-0140-AAM

No.

PLAINTIFF'S COMPLAINT FOR
NEGLIGENCE, NEGLIGENT
MISREPRESENTATION, BREACH
OF CONTRACT, AND BREACH
OF FIDUCIARY DUTY

JURY TRIAL DEMANDED

COMES NOW the plaintiff, Albert M. Zlotnick ("Zlotnick"), and for his complaint against defendants Workland & Witherspoon, PLLC, and Gregory Lipsker and Jane Doe Lipsker (collectively referred to as the "Workland & Witherspoon defendants"), alleges as follows:

COMPLAINT - 1

ORIGINAL

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PARTIES

1
2 1. Zlotnick is an individual who has resided in the State of Pennsylvania at
3 all times relevant during the events alleged in this Complaint.

4 2. Workland & Witherspoon, PLLC ("Workland & Witherspoon") is a
5 Washington professional limited liability corporation consisting of attorneys and
6 support staff and engaged in the practice of law. It is believed that Workland &
7 Witherspoon is a general partnership consisting of attorneys and support staff and
8 engaged in the practice of law. At all relevant times, Zlotnick was continuously
9 represented by Workland & Witherspoon. At all relevant times, Workland &
10 Witherspoon transacted business in Spokane County, Washington, and had its offices
11 located in Spokane County, Washington.

12 3. At all relevant times, Gregory Lipsker was an attorney and partner in the
13 Spokane, Washington office of Workland & Witherspoon. At all relevant times,
14 Zlotnick was continuously represented by Gregory Lipsker. Upon information and
15 belief, at all relevant times, Gregory Lipsker and Jane Doe Lipsker were husband and
16 wife. All acts and omissions set forth herein were done on behalf of and for the
17 benefit of Workland & Witherspoon and within the scope and authority of
18 Mr. Lipskers' duties and responsibilities as an agent of Workland & Witherspoon, and
19 for the benefit of Mr. Lipsker's marital community. As a shareholder of Workland &
20 Witherspoon, and under the doctrine of *respondeat superior*, Mr. Lipsker's actions
21 and omissions are imputed to the Workland & Witherspoon firm.
22

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 because the plaintiff and defendants are citizens of different states, and the matter in controversy exceeds \$75,000.00, exclusive of interest and costs. This Court has personal jurisdiction over the defendants because the defendants reside and conduct business within this district.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because the defendants reside in this district, are subject to personal jurisdiction in this district, and because a substantial part of the events giving rise to the claims herein occurred within this district.

FACTUAL BACKGROUND

6. At the suggestion of Greg Lipsker, Mr. Zlotnick acquired a controlling interest in Cimarron-Grandview Group, Inc. ("Cimarron"), a shell corporation and former mining company that had done no business for many years. Upon information and belief, Mr. Zlotnick's investment in Cimarron was solicited by Greg Lipsker, the then-controlling shareholder of Cimarron. At all relevant times, Gregory Lipsker was an officer, director, and shareholder of Cimarron, and he served as Cimarron's attorney.

7. In the Spring of 2000, Mr. Zlotnick was contacted by Herbert Wolas, an attorney for Charles Band, a California entrepreneur. Mr. Wolas knew that Charles Band and some or all of his corporations, including one called "Full Moon Universe," were looking for investors. Mr. Band is in the entertainment business. Mr. Zlotnick

1 attended an initial meeting in Hollywood, California on or about May 15, 2000, and
2 following that meeting, he asked Lipsker for his legal assistance with respect to the
3 transaction. Lipsker attended multiple meetings between Mr. Zlotnick, Band, and
4 others, and drafted most of the documents associated with the contemplated
5 transaction described below.

6 8. The general structure and features of the contemplated transaction
7 (hereinafter the "Transaction") was as follows:

- 8 a. Utilizing the shell merger concept, Cimarron would be the
9 acquiring company and another company, iSurrender.com, Inc.,
would be the target.
- 10 b. The shareholders of iSurrender would tender their shares to
11 Cimarron, and receive back newly issued shares of Cimarron such
12 that the "old" iSurrender shareholders would own 85% of the post-
merger Cimarron, which would own 100% of the stock of
13 iSurrender.
- 14 c. Post-merger, Cimarron would change its name to Full Moon
Universe, Inc., and its corporate domicile would change to Nevada.
- 15 d. On consummation of the merger, Cimarron would be a public
16 company.
- 17 e. Mr. Zlotnick would advance substantially all of the money to
18 finance the new company.

19 9. Eventually, the plan to change the corporate domicile of Full Moon
20 Universe, Inc., was abandoned, and the entity formerly known as Cimarron is
21 currently known as Full Moon Universe, Inc., a Washington Corporation."
22

1 10. The Workland & Witherspoon defendants expressly or impliedly
2 represented to Mr. Zlotnick that the attorneys and staff of the Workland &
3 Witherspoon defendants, including the named defendants in this case, were skilled
4 and expert in representing clients in business transactions, including those specifically
5 at issue in the Transaction between Zlotnick, Charles Band, and his associated entities.
6 In reliance upon their express and implied representations and promises, Mr. Zlotnick
7 retained the Workland & Witherspoon defendants to represent him with respect to all
8 matters pertaining to, or arising from, the Transaction.

9 11. As set forth above, at all material times, Gregory Lipsker was counsel for
10 Cimarron and had an ownership interest in Cimarron. Beginning in 1992, Mr. Lipsker
11 served on the Board of Directors for Cimarron and acquired an unknown amount of
12 stock in the company. Since Cimarron was the acquiring company in the Transaction,
13 Mr. Lipsker was in a position to benefit financially from the Transaction. After the
14 acquisition, Mr. Lipsker continued to serve as counsel and acting secretary to "Full
15 Moon Universe, a Washington corporation." Accordingly, the Workland &
16 Witherspoon defendants had an actual or potential conflict of interest with respect to
17 representation of Mr. Zlotnick in the Transaction. The Workland & Witherspoon
18 defendants failed to disclose their actual or potential conflicts of interest to Mr.
19 Zlotnick, and failed to obtain any written conflict disclosures or conflict waivers from
20 Mr. Zlotnick.

21 12. Gregory Lipsker attended at least two meetings with Mr. Zlotnick,
22 Charles Band, and others in late June and early July, 2000, with respect to the

1 Transaction. The Workland & Witherspoon defendants were also the principal
2 drafters of most, if not all, of the contracts and agreements pertaining to the
3 Transaction.

4 13. On June 8, 2000, the Workland & Witherspoon defendants sent Charles
5 Band's accountant a "due diligence" checklist requesting certain documents on Mr.
6 Zlotnick's behalf. However, there was no discussion between the Workland &
7 Witherspoon defendants and Mr. Zlotnick regarding the "due diligence" effort, nor
8 any legal recommendations made to address any issues raised during the process. The
9 Workland & Witherspoon defendants failed to provide Mr. Zlotnick with a written
10 report, and further failed to disclose to Mr. Zlotnick any of the risks uncovered during
11 the "due diligence" effort.

12 14. On June 20, 2000, the parties executed a "Reorganization Agreement" for
13 the Transaction, which was drafted by the Workland & Witherspoon defendants. The
14 Reorganization Agreement drafted by the Workland & Witherspoon defendants
15 suffers from several important flaws, including but not limited to (a) failing to include
16 a provision requiring repayment in the event of breach of the agreement by Charles
17 Band or iSurrender.com; (b) failing to include a provision restricting the use of the
18 funds advanced by Mr. Zlotnick for specific purposes, and (c) failing to include a
19 provision that would have prevented Charles Band from using the funds for purposes
20 other than those contemplated by the parties to the Transaction.

21 15. On June 27, 2000, iSurrender executed a promissory note in the amount
22 of \$1.5 million to repay the interim financing Mr. Zlotnick was prepared to provide.
The master note and companion security agreement, both of which were either drafted

1 or reviewed by the Workland & Witherspoon defendants, suffer from the same flaws
2 as the Reorganization Agreement. In addition, the Workland & Witherspoon
3 defendants failed, in whole or in part, to properly perfect a security interest in the
4 collateral provided under the security agreement.

5 16. The Workland & Witherspoon defendants waited until July 5, 2000 –
6 well after Mr. Zlotnick had signed the Reorganization and Security Agreements, and
7 after he had already advanced significant sums of money – to meet personally with
8 Charles Band and other iSurrender.com officers and directors. At these meetings, Mr.
9 Lipsker asked Mr. Band and the other individuals to complete due diligence
10 questionnaires. In his questionnaire responses, Band disclosed that he was involved in
11 other litigation, a description of which was “to be provided.” The Workland &
12 Witherspoon defendants did nothing to follow up on this information, and failed to
13 discuss any of the risks associated with other litigation with Mr. Zlotnick.

14 17. On August 11, 2000, Charles Band identified various personal and
15 business-related debts, litigation matters, and settlements. The Workland &
16 Witherspoon defendants failed to speak to any of Charles Band’s creditors, and never
17 obtained copies of the settlement agreements. Had they done so, the Workland &
18 Witherspoon defendants would have discovered that Mr. Band’s repayment of the
19 reduced debt amounts was subject to payment plans that would have “sprung back” to
20 their original amounts if the payments were not made in a timely manner. The
21 moneys advanced by Mr. Zlotnick presented an obviously irresistible temptation to
22 Mr. Band to fund his settlement obligations, yet the Workland & Witherspoon
defendants failed to consider how to protect Mr. Zlotnick from this, and did not
disclose any of the risks to Mr. Zlotnick.

1 18. On August 27, 2000, the parties to the Transaction executed the Share
2 Exchange Agreement, along with the Voting Trust Agreement. The Workland &
3 Witherspoon defendants knew that the Voting Trust Agreement was supposed to
4 confer on Mr. Zlotnick the right to vote Charles Band's shares; however, the Voting
5 Trust Agreement – drafted by the Workland & Witherspoon defendants – only
6 transferred the right to vote 40% of Charles Band's shares, improperly leaving Mr.
7 Band in majority voting control of the company.

8 19. In the meantime, iSurrender needed interim financing. Mr. Zlotnick
9 agreed to loan \$1.5 million in interim financing to iSurrender. In fact, he did more
10 than was initially asked: Before the implementation of the merger, Mr. Zlotnick
11 loaned \$1,875,000 to iSurrender based upon the belief that Full Moon would produce
12 10-20 new films per year.

13 20. On October 13, 2000, iSurrender.com (now Full Moon California)
14 released its 3rd Quarter financial report. The balance sheet assets identified
15 \$1,342,971 in "other receivables," an amount that increased from only \$192,950 as of
16 May 31, 2000. In fact, these "other receivables" represented money that Charles Band
17 improperly converted from iSurrender to repay old film production debts, of other
18 companies, that he had personally guaranteed.

19 21. On October 16, 2000, the parties to the Transaction modified the
20 promissory note to the sum of \$1,875,000, to reflect the additional amounts Mr.
21 Zlotnick had advanced. A second note modification occurred on October 17, 2000,
22 which provided that Mr. Zlotnick would be repaid from the debenture financing. The

1 Workland & Witherspoon defendants failed, however, to address how Mr. Zlotnick
2 would be repaid if there was no debenture financing.

3 22. On November 8, 2000, the parties to the Transaction signed an
4 "Agreement to Restructure," a one-page document drafted by the Workland &
5 Witherspoon defendants, which restructured fundamental aspects of the transaction.
6 However, the Agreement to Restructure failed to release – or even mention – any of
7 Mr. Zlotnick's obligations under the Reorganization Agreement.

8 23. On January 18, 2001, with note payment dates approaching, and no
9 money to make those payments, Charles Band provided a personal financial statement
10 in which he claimed an interest in a castle in Umbria, Italy. Between January and
11 April 2001, Mr. Band told Mr. Zlotnick in writing several times that he would provide
12 a security interest in the Italian castle in order to further secure the debt. Charles Band
13 signed an agreement declaring that the castle was in fact collateral for the money
14 owed Mr. Zlotnick. The Workland & Witherspoon defendants failed to properly
15 investigate whether Mr. Band in fact owned the castle, or to determine the legal
16 requirements necessary to perfect an interest in Italian real estate, or even to properly
17 document and effectuate the agreement.

18 24. After several failed efforts by Mr. Zlotnick to salvage his relationship
19 with Charles Band, within several months, Mr. Band defaulted on his obligations, and
20 Mr. Zlotnick was forced to file a lawsuit styled as Zlotnick v. Full Moon Universe,
21 Inc., et al., in the Superior Court of the State of California for the County of Los
22 Angeles, Case No. BC 262183 (the "California Litigation"). The failure of the

1 Workland & Witherspoon defendants to draft the Agreement to Restructure in such a
2 way as to release Mr. Zlotnick's obligations under the Reorganization Agreement
3 permitted the defendants to file a cross-complaint against Mr. Zlotnick in the
4 California Litigation, alleging that those obligations remained in effect and that Mr.
5 Zlotnick was liable for failing to engage in "best efforts" to raise money for Full
6 Moon. In addition, Mr. Band disputed Mr. Zlotnick's interest in the Italian castle in
7 the California Litigation.

8 25. Mr. Zlotnick was not compensated pursuant to his consulting agreement,
9 which was exacerbated by the fact that the Workland & Witherspoon defendants
10 failed to properly collateralize the agreement. Mr. Zlotnick also invested additional
11 monies and incurred additional expenses to be proven at trial.

12 26. In connection with a court-supervised settlement effort, the California
13 Litigation was reduced to judgment on December 8, 2003. The California Litigation
14 defendants failed to execute the settlement documents and have defaulted under the
15 terms of the judgment. The judgment has been, and is presently, uncollectible. As a
16 result, Mr. Zlotnick must now seek the full amount of his damages from the Workland
17 & Witherspoon defendants in order to make himself whole. On July 3, 2003, and by
18 subsequent amendments, Mr. Zlotnick and the Workland & Witherspoon defendants
19 entered into an agreement tolling the statute of limitations and any other time-related
20 defenses until April 30, 2004.

21 27. The Workland & Witherspoon defendants' actions described above
22 represent a breach of their contractual, fiduciary, and common law duties continuously

1 owed to Mr. Zlotnick during the course of the legal representation. Moreover, the
2 Workland & Witherspoon defendants' breach of these continuous duties was the
3 proximate cause of substantial damage to Mr. Zlotnick. Had the Workland &
4 Witherspoon defendants acted with the requisite standard of care in representing Mr.
5 Zlotnick, Mr. Zlotnick would not have sustained damages now exceeding \$3 million.

6 **FIRST CAUSE OF ACTION: NEGLIGENCE**

7 28. Mr. Zlotnick reasserts and incorporates the preceding paragraphs as if
8 fully set forth.

9 29. At all relevant times, there was an attorney-client relationship between
10 Mr. Zlotnick and the Workland & Witherspoon defendants. The Workland &
11 Witherspoon defendants owed a continuous duty to Mr. Zlotnick to exercise that
12 degree of care, skill, diligence, and knowledge commonly possessed and exercised by
13 a reasonable, careful, and prudent lawyer in the practice of law in the State of
14 Washington.

15 30. The Workland & Witherspoon defendants negligently breached their
16 continuous duty to Mr. Zlotnick in a variety of ways, including but not limited to (a)
17 failing to disclose its actual or potential conflict of interest to Mr. Zlotnick; (b) failing
18 to obtain written conflict disclosures or conflict waivers from Mr. Zlotnick; (c)
19 inadequate due diligence efforts with respect to the Transaction; (d) inadequate or
20 non-existent risk disclosures to Mr. Zlotnick; (e) drafting agreements with respect to
21 the Transaction that were highly unfavorable to Mr. Zlotnick; and (f) failing to
22 properly perfect security interests. The Workland & Witherspoon defendants'

1 conflicts of interest – coupled with and resulting in poor or nonexistent disclosures,
2 advice, and documentation – caused an inherently flawed and incredibly risky
3 transaction to proceed, when non-conflicted counsel clearly would have recommended
4 otherwise.

5 31. As a direct and proximate result of the Workland & Witherspoon
6 defendants' breach of their continuous duty, Mr. Zlotnick has suffered, and continues
7 to suffer, substantial economic loss currently exceeding \$3 million. Some or all of
8 these damages are liquidated sums. The specific amount of Mr. Zlotnick's damages
9 will be proven at the time of trial.

10 **SECOND CAUSE OF ACTION: NEGLIGENT MISREPRESENTATION**

11 32. Mr. Zlotnick reasserts and incorporates the preceding paragraphs as if
12 fully set forth.

13 33. The Workland & Witherspoon defendants expressly or impliedly
14 represented to Mr. Zlotnick that the attorneys and staff of the Workland &
15 Witherspoon defendants, including the named defendants in this case, were skilled
16 and expert in representing clients in business transactions, including those specifically
17 at issue in the Transaction between Mr. Zlotnick, Charles Band, and his associated
18 entities.

19 34. The representations of the Workland & Witherspoon defendants were
20 false and negligently made.

21 35. Mr. Zlotnick justifiably relied upon these representations, to his
22 substantial and irreparable detriment.

1 36. As a direct and proximate result of the Workland & Witherspoon
2 defendants' negligent representations, Mr. Zlotnick has suffered, and continues to
3 suffer, substantial economic loss currently exceeding \$3 million. Some or all of these
4 damages are liquidated sums. The specific amount of Mr. Zlotnick's damages will be
5 proven at the time of trial.

6 **THIRD CAUSE OF ACTION: BREACH OF CONTRACT**

7 37. Mr. Zlotnick reasserts and incorporates the preceding paragraphs as if
8 fully set forth.

9 38. The Workland & Witherspoon defendants contracted with Zlotnick,
10 expressly and impliedly promising to exercise that degree of care, skill, diligence, and
11 knowledge to sufficiently represent Mr. Zlotnick's interests with respect to the
12 Transaction.

13 39. The Workland & Witherspoon defendants failed to exercise the degree of
14 care and skill they promised, thereby breaching their contract with Mr. Zlotnick.

15 40. As a direct and proximate result of the Workland & Witherspoon
16 defendants' breach of contract, Mr. Zlotnick has suffered, and continues to suffer,
17 substantial economic loss, currently exceeding \$3 million. Some or all of these
18 damages are liquidated sums. The specific amount of Mr. Zlotnick's damages will be
19 proven at the time of trial.

20 **FOURTH CAUSE OF ACTION: BREACH OF FIDUCIARY DUTY**

21 41. Mr. Zlotnick reasserts and incorporates the preceding paragraphs as if
22 fully set forth.

42. At all relevant times, there was an attorney-client relationship between Mr. Zlotnick and the Workland & Witherspoon defendants. As Mr. Zlotnick's attorneys, the Workland & Witherspoon defendants owed a continuous fiduciary duty of care, loyalty, and good faith to Mr. Zlotnick.

43. The Workland & Witherspoon defendants breached their fiduciary duty to Zlotnick in a variety of ways, including but not limited to (a) failing to disclose its actual or potential conflict of interest to Mr. Zlotnick; (b) failing to obtain written conflict disclosures or conflict waivers from Mr. Zlotnick; (c) inadequate due diligence efforts with respect to the Transaction; (d) inadequate or non-existent risk disclosures to Mr. Zlotnick; (e) drafting agreements with respect to the Transaction that were highly unfavorable to Mr. Zlotnick; and (f) failing to properly perfect security interests.

44. As a direct and proximate result of the Workland & Witherspoon defendants' breach of their continuous fiduciary duties owed to Mr. Zlotnick, Mr. Zlotnick has suffered, and continues to suffer, substantial economic loss, currently exceeding \$3 million. Some or all of these damages are liquidated sums. The specific amount of Mr. Zlotnick's damages will be proven at time of trial.

RELIEF REQUESTED

WHEREFORE, plaintiff Zlotnick respectfully requests that this court:

1. Enter judgment against the Workland & Witherspoon defendants, jointly and severally, in favor of Mr. Zlotnick in an amount of damages which will be proven at the time of trial;

1 2. Award Mr. Zlotnick prejudgment interest on all liquidated sums, and
2 award Zlotnick all reasonable attorneys' fees and costs to which he is entitled for all
3 legal representation described in this Complaint, including the Workland &
4 Witherspoon defendants' representation of Mr. Zlotnick to date, all attorneys' fees and
5 costs incurred by Mr. Zlotnick in the California Litigation, and in this action;

6 3. Permit Mr. Zlotnick to amend its pleadings to conform with evidence
7 discovered prior to and/or offered at time of trial;

8 4. Enter an order disgorging all fees received by the Workland &
9 Witherspoon defendants; and

10 5. Grant such other relief as it deems appropriate under the circumstances.

11
12 DATED this 29 day of April, 2004.

13 LANE POWELL SPEARS LUBERSKY LLP

14
15 By 

16 James B. Stoetzer, WSBA No. 06298

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